

June 6, 2000

MAINE PUBLIC UTILITIES COMMISSION
Rulemaking to Establish Underground
Facility Damage Prevention Requirements
(Chapter 895)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

This rule establishes the requirements for compliance with the underground facility damage prevention program operating in Maine. This program is designed to protect the public from physical harm and interrupted service that can result from damage to underground facilities. The rule describes the responsibilities of excavators, underground facility operators (operators), the damage prevention system, and the Public Utilities Commission (Commission) in implementing Maine's damage prevention statute. The rule establishes notification, marking, and reporting procedures, defines violations and penalties, and describes the process by which the Commission will enforce the program and monitor its success.

II. BACKGROUND

Title 23 M.R.S.A. § 3360-A requires that a damage prevention system exist in Maine to ensure that adequate safety precautions protect the public when excavation occurs near an underground facility. The statute establishes procedures that must be followed by excavators and underground facility operators when excavation occurs. Dig Safe System, Inc. (Dig Safe), an independently owned corporation that operates the New England regional damage prevention system, currently carries out the underground safety system directed by law.

During the second session of the 119th legislative session, Maine's Legislature approved revisions to 23 M.R.S.A. § 3360-A.¹ Among other provisions, this legislation grants enforcement authority of the damage prevention program to the Commission. The revision authorizes the Commission to impose penalties for violations and to monitor the program to judge its success in preventing public injury. The Commission has not had such authority prior to the adoption of this law.

The purpose of this rule is to establish the procedures by which the Commission will carry out its enforcement authority. In addition, the draft rule incorporates the provisions of the statute and provides further implementation details to guide excavators

¹An Act Relating to Underground Facility Plants, P.L. 1999, ch. 718.

and operators in complying with the statute. By including both the provisions already present in law and additional implementation details in one rule, the Commission will provide all affected persons with a single, comprehensive statement of Maine's damage prevention program requirements.

The revised legislation that prompts this rulemaking takes effect on August 11, 2000. The Commission is conducting this rulemaking before that date, with the intent that the rule will become effective close to the effective date of the law.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. General Principles

1. Provisions contained in law and in current practice. The draft rule comprises three types of provisions: those required by law, those currently practiced by the Dig Safe program, and those that are necessary for the Commission to enforce and monitor the program's effectiveness.

The majority of the provisions in the draft rule are practices that are required by Maine law, as set forth in 23 M.R.S.A. § 3360-A and P.L. 1999, ch.718. Some revisions made through Chapter 718 are significant departures from existing practices.² This Notice points out all instances when a provision derives from law. As a guide to comparing the draft rule with the statute, we have developed two cross-reference tables, relating provisions of the statute to provisions of the draft rule. The tables are attached to this Notice of Rulemaking.

Other provisions in the draft rule reflect current practice of Dig Safe and its members. The Commission believes that these procedures are generally effective in protecting the public from harm and utilities' underground facilities from damage, and we do not intend to change such practices through this rule. If interested persons recommend changes to Dig Safe implementation, we will consider the region-wide impact before directing such changes. This Notice points out instances in which a provision derives from current Dig Safe practices.

Finally, the draft rule includes enforcement procedures that are not contained in law and are not currently in practice. These provisions will allow the Commission to monitor the program's effectiveness and to enforce the terms of the law, as we are directed to do in the revised legislation. We intend to recommend changes to the law and to make changes to our rule to the extent our monitoring reveals that such changes are necessary. The Commission invites parties to the rulemaking to comment on the efficiency and effectiveness of these procedures in the draft rule.

² For example, §§ 5-B and 5-C of Chapter 718 create an alternative method whereby commercial timber harvesters and borrow pit operators may more expeditiously excavate near underground facilities.

2. Articulation of Statute. In the draft rule, we have simplified or shortened the language of the statute to improve clarity while maintaining the meaning of the statute. In addition, we have organized the draft rule in a manner that will be useful to the persons using it by grouping all responsibilities of one entity together, generally in a chronological order. We invite parties to the rulemaking to consider whether the language in the draft rule accurately reflects the law.

3. Enforcement procedures. 23 M.R.S.A. § 3350-A(11) grants authority to enforce the damage prevention provisions to the Commission. Therefore, the Commission must establish, through this rule, a procedure for determining violations and for assessing and collecting fines. In the draft rule, we establish a procedure that accomplishes three overarching goals. First, it is flexible enough to allow the Commission to respond to a violation in a manner that is commensurate with a person's violation history. Second, it is efficient enough to allow expeditious processing that is not overly onerous to affected persons. Finally, it is effective in deterring incidents that result in harm to the public caused by damage to underground facilities. With this in mind, the draft rule includes reporting requirements that allow the Commission to recognize violations and to monitor results as well as a multi-step enforcement process that allows many violations to be resolved with a minimum of administrative process.

B. Section 1: General Provisions

Section 1(A) describes the purpose of this rule as establishing the responsibilities of persons subject to Maine's underground facility damage prevention statute and the process for enforcing the provisions of the rule.

Section 1(B) defines applicability. When used in conjunction with the definitions of member operators, non-member operators, and operators in the draft rule, it states that, unless otherwise indicated, the provisions of the draft rule refer to operators (i.e., to *all* persons owning or operating underground facilities). In instances when a provision is only applicable to member operators, the rule will so state. In addition, the provision states that Dig Safe System, Inc. will be the damage prevention system that operates in Maine. Therefore, when the statute refers to the system, the draft rule will refer to Dig Safe.

C. Section 2: Definitions

Section 2 defines terms used in this rule. Definitions provided in the statute have been incorporated into the rule.

The definition of "borrow pit" references Title 38 of Maine statute. Title 38 contains additional law relevant to borrow pit operators as well as a definition of "borrow pit." Our rule relies on Title 38 to determine what business entities are defined to be borrow pits.

The definition of “underground facility operator” poses a problem in this rule when attempting to clearly describe the responsibilities of persons who own or operate underground facilities. The definition in the statute exempts some persons by definition (e.g., utilities with fewer than 5 employees), but re-incorporates some of these same persons within the body of the statute (e.g., an exempt person who voluntarily joins Dig Safe). In the draft rule, we have attempted to clarify this language when describing the responsibilities of persons who own or operate facilities. We have maintained the definition from the statute, but we have added three definitions: “member operator,” “non-member operator,” and “operator.” Operators are *all* entities that own or operate underground facilities. We then divide this group into two sub-groups: those who are members of Dig Safe (members) and those who are not (non-members). This division more closely reflects the differences in responsibility found in the statute.

D. Section 3: Responsibilities of the Designer

Section 3 states that any person designing or planning an excavation must obtain sufficient information regarding underground facilities that will be affected, and must incorporate that information into any excavation plans. This provision is derived from the statute.

E. Section 4: Responsibilities of the Excavator

Section 4 establishes each task that must be performed by a person who excavates by moving earth, rock or other materials below the ground. These tasks help ensure that all operators are aware of excavations near their facilities, that those operators mark their facilities in a manner that allow safe excavation, and that excavation results in no harm to underground facilities. The tasks include pre-marking the excavation site, notifying Dig Safe, following safety procedures while excavating, and reporting. In addition, the section establishes an exemption for certain commercial forestry operations.

Section 4(A) states the excavator’s obligation to mark an excavation site before beginning the excavation, thereby informing operators of an excavation’s location. This provision is derived from the statute and from current Dig Safe procedures.

Section 4(B)(1) states that the excavator is required to notify Dig Safe before beginning excavation, to receive acknowledgement from Dig Safe in certain instances, and to re-notify Dig Safe if excavation begins or extends 30 days beyond the notification. These steps allow Dig Safe to notify member operators that an excavation will occur. The section also establishes additional notification requirements if excavation includes blasting. These provisions are derived from the statute and current Dig Safe procedures.

Section 4(B)(2) states that the excavator must provide similar notification to persons owning underground facilities who are not members of the Dig Safe (i.e., non-members). The statute exempts certain owners from joining Dig Safe, in deference to the burden that membership would impose. Because these operators will not be notified by Dig Safe of excavation near their facilities, the statute requires that the excavator notify the non-member operator directly. The provision in the draft rule is derived from the statute.

Section 4(B)(3) establishes a presumption of negligence if the excavator violates the notification provisions of this rule and damages a facility. This provision is derived from the statute.

Section 4(C) establishes safety procedures that the excavator must follow when performing an excavation. The section states that when working within a 36-inch safety zone (i.e., 18 inches in all directions from an underground facility) the excavator must use non-mechanical means to expose the facilities and gives further detail on how to comply with this requirement, and that the excavator must use the operator's marks to determine the safety zone, when those marks exist. In addition, the section allows excavation to occur in an emergency situation, and it requires the excavator to maintain all markings while performing excavation. These provisions are derived from the statute.

Section 4(D)(1) requires an excavator who damages a facility to notify the affected operator. This provision is derived from the statute.

Section 4(D)(2) requires that an excavator who has knowledge of a violation of this rule must notify the Commission, and the section establishes the method for this notification. The excavator must report a violation committed by itself or by another person. This requirement does not currently exist in statute or in operational practice. Along with the requirement in Section 6(C)(1), this requirement ensures that the Commission becomes aware of all violations of this rule and that the Commission is aware of the circumstances faced by both the operator and the excavator. As we stated earlier in this Notice, we intend to monitor the program's effectiveness and to proactively initiate corrective actions to our rule or to legislation if we deem it necessary. As a general rule, the Commission can discover violations to this rule only through reports from persons who observe them. Therefore, the draft rule contains provisions that require those persons to report their observations to the Commission.

Section 4(E) protects an excavator from liability under circumstances in which the excavator complied with the provisions of this rule. It is derived from the statute.

Section 4(F) allows commercial timber harvesting and borrow pit operations to be exempt from the notification requirements to member operators of Section 4, and states the conditions under which exemption may occur. In addition, it establishes actions that a commercial timber harvester may take to excavate in close

proximity to underground facilities while maintaining exemption from Section 4. This provision is derived from the provisions in 23 M.R.S.A. § 3360-A(5-B) and § 3360-A(5-C). The forest industry maintains a large number of continually relocating excavation sites throughout thousands of acres in Maine. The land on which these excavations occur is generally unpopulated and is usually owned by the company carrying out the excavation. The industry has found the marking and notification requirements of the statute to be unmanageable, and believes them to be unnecessary. The recently approved exemption provision was implemented to accommodate the unique conditions of this industry while maintaining adequate public safety. Section 4(F)(1) allows the industry to excavate without notification and marking when the excavator is generally more than 100 feet away from an underground facility, and requires the excavator to identify when this situation occurs. Section 4(F)(2) allows a commercial timber harvester to excavate closer to a facility, if the excavator contracts the terms of the excavation with the affected operators. This provision is derived from the statute.

F. Section 5: Responsibilities of Dig Safe

Section 5 establishes the tasks that must be performed by Dig Safe. These tasks are currently required by New Hampshire's rules, and Dig Safe currently performs the tasks throughout the New England region.

Section A directs Dig Safe to notify member operators when Dig Safe receives notice of an excavation. This provision is derived from the statute.

Section B establishes operational requirements that ensure that member operators and excavators can reliably communicate with Dig Safe in a timely manner. These provisions are derived from the statute and from current Dig Safe procedures.

To support our goal of making this rule a single, comprehensive statement of Maine's damage prevention program requirements, we have included Dig Safe's toll-free number in this section. By doing so, we risk the need to carry out a rulemaking proceeding if the toll-free number changes. We invite parties to comment on whether inclusion of the number is useful and desirable.

Section C requires Dig Safe to carry out various informational activities. Dig Safe currently carries out these activities. A damage prevention program will be successful only if all excavators and operators are familiar with its requirements. Therefore, it is crucially important that Dig Safe continue to carry out a comprehensive public education program.

G. Section 6: Responsibilities of the Operator

Section 6 establishes the tasks that must be performed by the persons who own and operate underground facilities. These tasks further ensure that all operators are aware of excavations near their facilities, that those operators mark their facilities in a manner that allows safe excavation, and that excavation results in no harm

to underground facilities. The provisions in this section direct when membership in Dig Safe is required, require marking of underground facilities, and define reporting requirements.

Section 6(A)(1) states that all “underground facility operators” must become members of Dig Safe and must pay a portion of Dig Safe’s operating expenses. Some persons that own or operate underground facilities are exempt from the definition of underground facility operator in the statute and are not required to join Dig Safe because of the financial burden that membership would impose. Section 6(A)(1) allows exempt operators to become members at their option. This provision ensures that most operators in Maine will receive the benefits of Dig Safe’s timely notification of excavation that affects the operator’s facilities. This provision is derived from the statute.

Section 6(A)(2) states that an operator that is exempt from joining Dig Safe and that does not choose to join voluntarily must mark its facilities following procedures identical to those required by member operators. This provision, along with Section 4(B)(2), protects the safety of the public and the underground facilities when an excavation is performed near facilities owned by a non-member. The draft rule is derived from the statute.

Section 6(B)(1) states the operator’s obligation to mark its underground facilities before excavation begins, thereby informing the excavator of those facilities’ location. This provision is derived from the statute.

Section 6(B)(2) states that the operator must mark its facilities within two business days of receiving notice from Dig Safe (or from the excavator if the operator is a non-member). If this timeframe is too short for the operator to comply, the section defines a procedure for extending the timeframe. Section 6(B)(2)(c) requires an operator to mark as soon as possible in an emergency situation, thereby ensuring that the safety provided by marking is attained in instances when an excavator responds to an emergency pursuant to Section 4(C)(1). These provisions are derived from the statute.

Section 6(B)(2)(d) establishes procedures that allow an operator to dig test holes when necessary to locate its facilities. The procedure requires the operator to notify any other operators in the vicinity of the test holes, and requires those operators to mark their facilities within an expedited time frame. This provision incorporates current Dig Safe procedures.

Sections 6(B)(3) and 6(B)(4) describe the processes by which an operator must mark its facilities. The processes are those currently being used by Dig Safe members, and have proven to be effective in communicating facility locations to excavators.

Section 6(C)(1) requires an operator who has knowledge of a violation of this rule to notify the Commission, and establishes the method for this notification. An

operator must report a violation committed by itself or by another person. This requirement does not currently exist in statute or in operational practice. In conjunction with the requirement in Section 4(D)(2), this requirement ensures that the Commission becomes aware of all violations of this rule and of the circumstances faced by both the operator and the excavator affected by the potential violation. As stated in the discussion of Section 4(D)(2), the Commission generally can discover violations of this rule only through reports from persons who observe them. Therefore, the draft rule contains provisions that require those persons to report their observations to the Commission.

Section 6(C)(2) requires that an operator report monthly to the Commission the number of notifications the operator receives from Dig Safe, as well as other related information. The reports required by Sections 6(C)(1) and 6(C)(2) allow the Commission to monitor the types and frequency of activities that result in potential safety threats. The provision further allows the Commission to gauge the rule's effectiveness and to proactively recommend improvements.

Section 6(D) requires owners and operators of underground gas facilities to notify the Fire Department of an affected town before an excavation occurs. In addition, the provision requires such operators to provide information about their facilities to various government organizations whose citizens might be affected if the facilities are damaged. This provision adds an additional layer of safety to excavations near gas facilities. This provision is derived from the statute.

H. Section 7: Commission Activities

Section 7(A) allows the Commission, when necessary, to require information from an excavator, an operator, or Dig Safe, in addition to reports already required by this rule. The provision further allows the Commission to monitor the rule's effectiveness, and improves the Commission's ability to carry out its enforcement responsibilities.

Section 7(B) sets forth the procedure that all persons must follow when an enforcement action occurs. The procedure generally mirrors provisions in the rules of the Massachusetts Department of Telecommunications and Energy, adjusted to comply with Maine's statutory provisions. We envision that the incident reports required by Sections 4(D)(2) and 6(C)(1) will largely determine when the Commission will initiate an enforcement action. However, we will also consider complaints brought by any person and any other available material to determine whether to initiate an action.

Our goal in developing this procedure is to allow potential violations to be addressed in an informal, flexible manner to the greatest extent possible. With this goal in mind, the draft rule allows a person named as committing a potential violation (respondent) to respond to an allegation in writing or in person, and it authorizes an informal review to occur. If the informal review fails to reach a satisfactory conclusion, the respondent may request an adjudicatory hearing. The draft rule establishes that

these hearings will conform to the requirements of the Maine Administrative Procedures Act, 5 M.R.S.A. §§ 8001-11112.

Section 7(B)(1) specifies that, first, the Commission shall issue a notice of probable violation (NOPV) containing its understanding of the facts surrounding the alleged violation and the penalty that the staff reviewer recommends that the Commission order, as well as various other information. Next, the respondent may contest the NOPV in writing or in person at an informal review. Thirty days are allowed for the respondent's response to the NOPV. The draft rule states that if the respondent does not contest the NOPV within this time, the respondent will be in default and must pay the administrative penalty if ordered by the Commission. The draft rule also clarifies that this instance will be treated as a violation for purposes of future applications of the rule in evaluating an excavator or operator's record of violations.

Section 7(B)(2) establishes an informal review process, if the respondent chooses to contest the NOPV. Commission staff members will conduct the review, and the respondent may present information and be represented by a lawyer. The staff member will issue a written recommended decision that the Commission will approve (or amend) at a deliberative session. We envision that the Commission will not change the recommended penalty except in rare cases. The draft rule states that the Commission will not increase the recommended penalty without allowing the respondent further chance to participate in the review.

If requested by the respondent or required by the Commission, the Commission will further hold an adjudicatory hearing pursuant to Section 7(B)(3) and issue an order containing its decision pursuant to Section 7(B)(4). At any time in the process, the parties may resolve the matter through a consent agreement pursuant to Section 7(B)(5).

We believe that all parties will usually be best served if infractions can be resolved without an adjudicatory hearing, and we will conduct the informal review with that end in mind. By allowing an informal review, the draft rule increases the flexibility and efficiency of the enforcement process, thereby reducing the cost and time required by all parties. With this in mind, the draft rule both allows and requires a respondent to participate in the informal review before being permitted to request an adjudicatory hearing. We invite comments on whether a respondent should be allowed to bypass the informal review and to request an adjudicatory hearing immediately after receiving a notice of probable violation.

Section 7(C) allows the Commission to delegate portions of the review process to staff members.

I. Section 8: Administrative Penalties

Section 8(A) establishes that the Commission must approve an administrative penalty in a deliberative session, regardless of whether the penalty was

recommended in an NOPV or following an informal review or an adjudicatory hearing. This satisfies the statutory requirement that the Commission have an adjudicatory process before imposing an administrative penalty.

Section 8(B) states that the Commission may assess a penalty on an excavator or member operator after the review process. Section 8(C) contains the actions that constitute a violation of the rule for which an excavator or a member operator can be fined. The draft rule is derived from the statute's direction that member operators may be assessed a penalty, but non-member operators may not. This outcome results from the statute's definition (and subsequent applicability provision in 23 M.R.S.A. §§ 3360-A (1-A)) of "underground facility operator."

Section 8(C)(1) states that a penalty can be assessed if an excavator fails to pre-mark an excavation pursuant to Section 4(A), fails to notify Dig Safe before excavation pursuant to Sections 4(B)(1)(a) and 4(B)(1)(b), fails to notify Dig Safe before blasting pursuant to Section 4(B)(1)(c), fails to re-notify Dig Safe pursuant to Section 4(B)(1)(d), or fails to carry out the safety procedures required by Section 4(C)(2) of the draft rule. This provision is derived from terms of the statute. The statute further states that an excavation conducted in a reckless or negligent manner that poses a threat to an underground facility constitutes a violation. Section 8(C)(2) is derived from this term of the statute.

Sections 8(C)(3) and 8(C)(4) apply to member operators. The statute specifies violations performed by "underground facility operators." As discussed earlier, that term excludes certain operators. The draft rule retains the applicability of provisions regarding violations and penalties to only member operators.

Section 8(C)(3) states that a penalty can be assessed if a member operator fails to mark an excavation area pursuant to Sections 6(B)(1), 6(B)(2)(a), and 6(B)(4)(b) or fails to re-mark pursuant to Section 6(B)(2)(b). This provision is derived from terms of the statute. The statute further states that a member operator that marks in a reckless or negligent manner commits a violation. Section 8(C)(4) is derived from this term of the statute.

Section 8(C)(5) defines excavators' actions that the Commission will consider to be reckless or negligent for the purpose assessing penalties. We will consider failure to notify a non-member operator pursuant to Section 4(B)(2), failure to take steps in an emergency pursuant to Section 4(C)(1), and failure to maintain pre-markings pursuant to Section 4(C)(3) to constitute reckless or negligent excavation. In addition, we consider any remaining provisions in Sections 4(B) and 4(C) to be necessary for adequate notification. Therefore, Section 8(C)(5)(a) states that failure to comply with any provision in Sections 4(B) and 4(C) will constitute reckless or negligent marking or excavating behavior for the purposes of assessing a penalty.

Section 8(C)(5)(b) defines member operators' actions that the Commission will consider to be reckless or negligent for the purpose assessing

penalties. We will consider failure to take steps in an emergency pursuant to Section 6(B)(2)(c) and failure to pre-mark when digging test holes pursuant to Section 6(B)(2)(d) to constitute reckless or negligent excavation. In addition, we consider any remaining provisions in Section 6(B) to be necessary for adequate marking. Therefore, Section 8(C)(5)(b) states that failure to comply with any provision in Sections 6(B) will constitute reckless or negligent behavior for the purposes of assessing a penalty.

Section 8(D) incorporates a new statutory provision that requires the Commission to consider an excavator's or member operator's safety record during the prior 12 months. The provision allows the Commission the flexibility to take an operator or excavator's history and compliance record into consideration when determining a penalty.

Section 8(E) establishes the maximum penalty levels the Commission may impose for the first violation within a year and for subsequent violations within a year. The Commission is not required to impose a penalty, and the draft rule provides the Commission the discretion to consider such things as the severity of the violation and an excavator's or member operator's safety history. The provision is derived from the statute. In the draft rule, we have not pre-defined conditions that would result in particular penalty levels. We believe that, particularly in the early days of this rule's operation, the Commission should consider each case on its merits and develop a history of decisions that will inform our judgment in future enforcement proceedings.

Section 8(F) allows the Commission to require an excavator or operator to participate in an educational program conducted by Dig Safe. This provision increases the flexibility and effectiveness of the process by allowing an option that might be useful instead of or in addition to a financial penalty in improving public safety.

Section 8(G) authorizes the Commission to take appropriate punitive action if an excavator or an operator fails to comply with the reporting requirements contained in Sections 4(D) and 6(C)(1). The basis for Commission action is its contempt authority contained in 35-A M.R.S.A. §1502. The Commission intends to impose a fine on a non-reporting party only in cases of willful failure to report. As discussed earlier in this Notice, the Commission's ability to enforce the terms of this rule relies upon our ability to discover violations through these reports. We invite parties to comment on this provision and whether it will be useful and effective in ensuring that the Commission is able to carry out its responsibilities under this rule.

J. Section 9: Contempt

Section 9 states that the Commission may use its contempt authority, 35-A M.R.S.A. § 1502, to punish non-compliance with the provisions of this rule or its orders and requirements.

K. Section 10: Imprudent action

Section 10 states that an excavator or operator may be held liable for damages caused when the excavator or operator acts in a manner that is not careful or prudent. This provision clarifies that conforming to the provisions of the rule does not absolve a person from acting prudently in any situation that occurs. This provision is derived from the statute.

L. Section 11: Injunctions

Section 11 establishes conditions under which the Commission or an operator may begin a court action seeking a temporary restraining order or injunction to prevent unsafe excavation. The provision is derived from the statute.

IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing will be held on July 5, 2000, at 1:00 p.m.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing, if one is held, accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

Written comments on the proposed rule may be filed with the Administrative Director no later than July 17, 2000. Please refer to the Docket Number of this proceeding, Docket No. 2000-419, when submitting comments.

We are mindful of the desirability of implementing this rule as quickly as possible after the effective date of Chapter 718. Therefore, we will attempt to complete this rulemaking by August 2000.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached Rule to:

1. All utilities operating in Maine, including natural gas pipeline utilities;
2. Sewer and cable TV operators to the greatest extent practicable;
3. Excavators operating in Maine, to the greatest extent practicable;

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond